



Agricultural Marketing Service

7 CFR Part 905

[Doc. No.: AMS-SC-21-0054]

Amendments to the Marketing Order for Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes amendments to Marketing Order 905, which regulates the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida.

The proposed amendments reduce the size of the Citrus Administrative Committee (Committee) and lower quorum requirements, revise the nomination and selection processes, remove the requirement to allocate committee seats on the basis of volume from each district, and add a new section to provide the Committee authority to receive voluntary contributions for promotion and research projects. Conforming changes to align the marketing order with the proposed amendments are also proposed.

DATES: The referendum will be conducted from April 3 through May 1, 2023. The representative period for the referendum is August 1, 2021, through July 31, 2022.

ADDRESSES: Interested persons with questions and comments are invited to submit written questions and comments to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; or Telephone: (202) 720-2491.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence

Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Geronimo.Quinones@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of citrus producers and shippers operating within the area of production, and a non-industry member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies

to consider whether their rulemaking actions would have tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposal has also been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule shall not be deemed to preclude, preempt, or supersede any State program covering oranges, grapefruit, tangerines, and pummelos grown in Florida.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608 (15)(A)), any handler subject to an order may file with the United States of Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 Section 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. AMS may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed herein are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order.

The Committee unanimously recommended the amendments following deliberations at a public meeting held on November 19, 2020. The proposals would reduce the size of the Committee and lower quorum requirements, revise the nomination and selection processes, eliminate the requirement to allocate Committee seats on the basis of volume from each district, and add a new section to provide the Committee authority to receive voluntary contributions for promotion/research projects. Other conforming changes to align the marketing order with the proposed amendments were also recommended.

A proposed rule soliciting comments on the proposed amendments was published in the **Federal Register** on June 30, 2022 (87 FR 39003). Seven comments were received in response to the proposed rule, all of which were in support of the proposal. Based on all the information available to AMS at this time, including the comments received in response to the proposed rule, no substantive changes will be made to the proposed amendments.

AMS will conduct a producer referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments, if they are favored by producers in the referendum.

Proposal 1 – Reduce Committee Size

Section 905.19 currently provides that the Committee consists of at least eight but not more than nine grower members, and eight shipper members. A differentiation between grower and shipper members on the Committee is also provided in § 905.19.

This proposal would amend § 905.19 by reducing the size of the Committee from at least eight but not more than nine grower members, and eight shipper members, to 10

grower members. The Committee would be grower-based, consisting of 10 members and 10 alternate members, which would eliminate the designation of shipper members. The grower members would be producers who produce within the district for which they are nominated and selected to represent. The proposed revisions would allow grower members to also be shippers or employees of shippers, which is limited under the current regulations. However, the Committee may establish alternative qualifications for such grower members with approval of the Secretary. The option to increase the Committee by one non-industry member nominated by the Committee and selected by the Secretary would remain unchanged.

Section 905.14 currently provides that the Committee can redefine the districts, reapportion or change the grower membership of districts, or both, provided that Committee membership consists of at least eight but not more than nine grower members.

This proposal would amend § 905.14 by revising the reference to total number of member seats from at least eight but not more than nine grower members, to 10 grower members. This change would align this section with the proposed new Committee size.

Section 905.20 provides that members and their alternates serve a 2-year term of office, but that has not included non-industry members due to the current § 905.150(d). This proposal would align the terms of office for all members by removing language from § 905.150(d), which created a 1-year term of office for non-industry members, and replacing it with language specifying a 2-year term of office for non-industry members.

Since promulgation of the Order in 1957, the Florida citrus industry has undergone consolidation and crop loss. Increasing labor costs, real estate pressures, and citrus greening have been contributing factors. Current industry structure shows there are few growers who are not affiliated with handlers, and most of the handlers are also growers. Total citrus acreage is about half of what it was at its peak production and has declined 22 percent from 2010 to 2020. Not distinguishing between grower and shipper

members and decreasing the Committee's size to 10 members and 10 alternate members would make Committee membership more reflective of today's industry. The Committee would be able to fill all its member positions with less difficulty. Aligning the term of the public member to the same 2-year term as the rest of the Committee will also improve efficiency and the effectiveness of the position. A 2-year term will help ensure that the public member can contribute to the work of the Committee at a higher level.

Proposal 2 – Revise Nomination and Selection Process

For grower members, § 905.22 currently provides that, on even numbered years, nominees for open grower member and alternate member positions shall be chosen by ballot. In support of this nomination process, § 905.22(a) further provides that the Committee will publicly announce and hold grower meetings no later than June 10 to make those nominations. The nominees chosen in this manner, along with the vote certification and any other information requested, will be submitted by the secretary and chairman of each grower-meeting to the Secretary of Agriculture (Secretary) on or before June 20. At least two of the grower-nominees and their alternates will be affiliated with a bona fide cooperative marketing organization. Section 905.22(b) outlines the process for nominating shipper members and their alternates.

This proposal would amend § 905.22 by removing the designation of shipper members. Section 905.22(a)(1) would be revised by changing the deadline for Committee nominees from June 10 to April 10, and the deadline for presenting nominees for selection to the Secretary from June 20 to April 20. A revision to paragraph 905.22(a)(2) would add language to clarify that grower members are producers who may also be shippers or who are also employees of shippers. The requirement that at least two of the grower nominees and their alternates be affiliated with a bona fide cooperative marketing organization would be changed to one grower nominee and their alternate.

Section 905.23 currently provides that the Secretary will select members and alternate members from each district. The grower nominations will be made from qualified persons and at least two members and their alternates shall be affiliated with bona fide cooperative marketing organizations. Furthermore, the Secretary shall select at least two shipper members and their alternates to represent bona fide cooperative marketing organizations of handlers. The remaining shipper members and their alternates represent handlers who are not affiliated. Section 905.29 currently provides that when a member and that member's alternate are unable to attend a meeting, any alternate designated by the member or Committee to act in his or her stead for that meeting must represent the same affiliation as the member.

Section 905.23 would be amended by removing the allocation of Committee seats by district from the selection process and providing that only one nominee and their alternate be affiliated with a bona fide cooperative marketing organization. Proposed changes to § 905.29 would eliminate the requirement that any person designated to serve on the Committee in the absence of a member and his or her alternate represent the same group affiliation as the absent member and alternate. This would not apply to the public member.

Currently there are three districts. A nomination meeting is scheduled in each district for growers and shippers. Votes are cast by each respective district for each member type and the corresponding alternate. Growers participate in the nomination process for grower members and alternates, while shippers participate in the nomination process for shippers and their alternates. Alternates must meet the same requirements of the member, which further complicates finding suitable candidates for nomination. Because handlers crisscross the state buying fruit, the differentiation of districts no longer serves a practical purpose since all but one shipper sources fruit from multiple districts. With the current shrinking of the industry and the number of growers and shippers

working as both, eliminating the distinction between growers and shippers will make it easier to facilitate the nomination and selection process and better reflect the current industry.

Proposal 3 – Revise Quorum Requirements

Currently, § 905.34 states that 10 members of the Committee shall constitute a quorum, and any action of the committee shall require at least 10 concurring votes. Five of those concurring votes must be grower votes. It also states that the Committee may provide for meeting by telephone, telegraph, or other means of communication.

This proposal would modify § 905.34 to allow seven members to constitute a quorum, with six concurring votes required to pass any motion or approve any Committee action. Finally, a small change would eliminate “telegraph” as a valid means of communication.

The Committee is experiencing difficulties obtaining a quorum at meetings to conduct business activities. Many industry members are fulfilling multiple roles. Reductions in staff due to rising operational costs has made it difficult for smaller growers and handlers to leave their businesses to participate in meetings. These factors are making it more difficult to fill the seats on the Committee. Adjusting the current requirements would enable the Committee to operate fully and reduce the risk of not establishing a quorum during scheduled meetings or not having the required votes to pass any action. These changes would help to increase the Committee’s effectiveness.

Proposal 4 – Authority to Accept Voluntary Contributions from Domestic Sources

Section 905.54 of the Order authorizes the Committee, with the approval of the Secretary, to establish research, marketing, and promotional projects. This proposal would add a new § 905.43 to provide the Committee with authority to receive voluntary contributions from domestic sources to fund promotional and research projects. Any contributions made to the Committee will be free from any encumbrances by the donor

and the Committee will retain complete control of their use.

Presently, research and promotional activities are administered by the Florida Department of Citrus, which is a state agency. Such projects are generally funded by grower assessments through the Florida Department of Citrus and are administered by the Florida Citrus Commission. At the Committee's request, research and promotional authority was added to the Order in 2009 (74 FR 46303) to ensure that a mechanism exists for the Committee to conduct those activities. Such activities are paid by assessments authorized by the Order. Consequently, increases to the assessment rate may be needed if the Committee desires to increase its research or promotional activities. Furthermore, while it is expected that the state agency will continue to exist and offer these services, should the agency close, the Committee could ensure that fresh citrus research continues. The Committee believes that the ability to receive voluntary contributions toward such projects may eliminate the need to use or increase the assessment rate, thereby minimizing financial pressure on producers. Contributions would be used for more research and promotional activities that would benefit the entire industry.

The following concurring changes would also be made to align the Order with the above amendments:

Section 905.114 would be revised to create a single district, down from the current number of three. Florida Citrus acreage has declined from approximately 900,000 acres to approximately 435,000 acres. As previously discussed in Proposal 1, because of the effects of citrus greening, handlers must access fruit from statewide sources. Currently, only one handler packs fruit exclusively from its own district, while all other handlers access fruit from all districts and production areas. The changes to § 905.114 would create one statewide district, better reflecting current industry structure and practices.

Section 905.120 would be revised to eliminate any reference to handlers as a distinct class for purposes of nominations, since such designations will no longer be relevant to the process. The volume vote for shipper nominations and shipper designations would also be eliminated from § 905.120. By eliminating the volume vote, the Committee expects this would provide small growers greater opportunity and representation moving forward.

Finally, changes to § 905.150 would revise the current 1-year term of office for the public member to a 2-year term. This would align the public member with all members and their alternates, which serve a 2-year term of office.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

There are approximately 15 handlers of Florida citrus who are subject to regulation under the Order and approximately 500 citrus producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of no more than \$30,000,000, and small agricultural producers of orange groves are defined as those having annual receipts of no more than \$3,500,000 (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS) and the Citrus Administrative Committee, the weighted average packing house door equivalent price for fresh Florida citrus for the 2020–21 season was approximately \$6.52 per carton with total shipments of around 6,022,426 cartons. Based on this information,

the majority of handlers have average annual receipts of significantly less than \$30,000,000 (\$6.52 times 6,022,426 cartons equals \$39,266,217.52, divided by 15 handlers equals \$2,617,747.83 per handler).

In addition, based on the NASS data, the weighted average grower price for the 2020-21 season was estimated at \$4.95 per carton of fresh citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is well below \$3,500,000 (\$4.95 times 6,022,426 million cartons equals \$29,811,008.70, divided by 500 growers equals \$59,622.02 per grower). Thus, the majority of Florida citrus handlers and growers may be classified as small entities.

AMS has determined that the proposed amendments would not have a significant impact on a substantial number of small businesses. Rather, large and small entities alike would be expected to benefit from the Committee's improved ability to address important issues of interest to all on a timely basis. The proposed reduction in the number of seats on the Committee, and the reduced quorum and lowered voting requirements, would not require any significant changes in producer or handler business operations, and no significant industry educational effort would be needed. Producers and handlers, large and small alike, would incur no additional costs. No small businesses would be unduly or disproportionately burdened as a result of this proposal going into effect.

The Committee unanimously recommended the proposed amendments at a public meeting on November 19, 2020. If these proposals are approved in a referendum, there would be no direct financial effects on producers or handlers.

The Florida citrus industry has undergone consolidation and crop reduction. Because of this fact, it has become difficult to fill the member seats on the Committee and to obtain a quorum to conduct business activities. Decreasing the Committee's size would make it more reflective of today's industry and easier to fulfill the quorum requirement. The current districts are not relevant because handlers routinely source fruit

from across the state, therefore the differentiation of districts no longer serves a practical purpose. Authority to accept voluntary contributions from domestic sources would allow the Committee to collaborate with other organizations for research/promotional activities. No economic impact is expected if the proposed amendments are approved because they would not establish any new regulatory requirements on handlers, nor would they have any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if this proposal is approved.

As an alternative to this proposal, the Committee considered making no revisions to the Order at this time. However, due to changes in the industry, the Committee believes the proposals are justified and necessary to ensure its ability to locally administer the program. AMS concurs with that conclusion.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The November 19, 2020, Committee meeting was widely publicized throughout the production area. Meetings are held virtually or in a hybrid style. Participants both large and small, have a choice whether to attend in person or virtually and can participate in the Committee's deliberations on all issues.

A proposed rule concerning this action was published in the **Federal Register** on June 30, 2022 (87 FR 39003). A copy of the rule was sent via email to the Committee Manager for disposal to all Committee members and Florida citrus handlers. Finally, the proposed rule was made available by USDA through the Internet and the Office of the Federal Register. A 60-day comment period ending August 29, 2022, was provided to allow interested persons to respond to the proposals. Seven comments were received during the comment period, all of which were in support of the proposed amendments. Based on all the information available to AMS at this time, including the comments received in response to the proposed rule, no substantive changes will be made to the amendments as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

AMS has determined that the findings and conclusions, and general findings and determinations included in the proposed rule set forth in the June 30, 2022, issue of the **Federal Register** (87 FR 39003) are appropriate and necessary and are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order

Amending the Order Regulating the Handling of Oranges, Grapefruit, Tangerines, and Pummelos Grown in Florida.” This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered that this entire proposed rule be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 through 407) to determine whether the annexed order amending the Order regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida is approved by growers, as defined under the terms of the Order, who during the representative period were engaged in the production of oranges, grapefruit, tangerines, and pummelos in the production area. The representative period for the conduct of such referendum is hereby determined to be August 1, 2021, through July 31, 2022.

The agents designated by the Secretary to conduct the referendum are Dolores Lowenstine, Christian Nissen, and Jennie Varela, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Dolores.Lowenstine@usda.gov, Christian.Nissen@usda.gov, and Jennie.Varela@usda.gov, respectively.

Order Amending the Order Regulating the Handling of Oranges, Grapefruit, Tangerines, and Pummelos grown in Florida¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 905; and all said previous findings and determinations are hereby

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 905 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 905 as hereby proposed to be amended regulates the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 905, as hereby proposed to be amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 905, as hereby proposed to be amended, prescribes insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of oranges, grapefruit, tangerines, and pummelos produced or packed in the production area; and

5. All handling of oranges, grapefruit, tangerines, and pummelos produced or packed in the production area as defined in marketing order 905 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of oranges, grapefruit, tangerines, and pummelos grown in Florida shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator and published in the **Federal Register** (87 FR 39003) on June 30, 2022, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 905 as follows:

PART 905 – ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA

1. The authority citation for part 905 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Amend § 905.14 by revising paragraph (a) introductory text to read as follows:

§ 905.14 Redistricting.

(a) The Committee may, with the approval of the Secretary, redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of districts, or both: Provided, That the membership shall consist of 10 grower members, and any such change shall be based, insofar as practicable, upon the respective averages for the immediately preceding three fiscal periods of:

* * * * *

3. Amend § 905.19 by revising paragraph (a) to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of 10 grower members. Grower members shall be producers who produce within the district for which they are nominated and selected to represent. Grower members may be

persons who, in addition to being producers, are shippers or employees of shippers:

Provided, that the committee, with the approval of the Secretary, may establish alternative qualifications for such grower members. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary.

The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

* * * * *

4. Revise § 905.22 to read as follows:

§ 905.22 Nominations.

(a) The Committee shall give public notice of a meeting of producers in each district, to be held not later than April 10th of even-numbered years, for the purpose of making nominations for grower members and alternate grower members. The Committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of April.

(b) Each nominee shall be a producer in the district from which he or she is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he or she is a producer. At least one of the nominees and their alternates so nominated shall be affiliated with a bona fide cooperative marketing organization.

(c) Notwithstanding the provisions of paragraph (a) of this section, nomination and election of members and alternate members to the Committee may be conducted by

mail, electronic mail, or other means according to rules and regulations recommended by the Committee and approved by the Secretary.

5. Revise § 905.23 to read as follows:

§ 905.23 Selection.

(a) From the nominations made pursuant to § 905.22(a) or from other qualified persons, the Secretary shall select 10 members and 10 alternates. At least one such member and their alternate shall be affiliated with a bona fide cooperative marketing organization.

6. Amend § 905.29 by revising paragraph (b) to read as follows:

§ 905.29 Inability of members to serve.

* * * * *

(b) If both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum. If the member is unable to designate such an alternate, the committee members present may designate such alternate.

* * * * *

7. Amend § 905.34 by revising paragraphs (a) through (c) to read as follows:

§ 905.34 Procedure of committees.

(a) Seven members of the committee shall constitute a quorum.

(b) For any decision or recommendation of the Committee to be valid, six concurring votes shall be necessary: Provided, that the Committee may recommend a regulation restricting the shipment of grapefruit grown in Regulation Area I or Regulation Area II which meets the requirements of the Improved No. 2 grade or the Improved No. 2 Bright grade only upon the affirmative vote of a majority of its members present from the regulation area in which such restriction would apply; and whenever a meeting to consider a recommendation for release of such grade is requested by a majority of the

members from the affected area, the committee shall hold a meeting within a reasonable length of time for the purpose of considering such a recommendation. If after such consideration the requesting area majority present continues to favor such release for their area, the request shall be considered a valid recommendation and transmitted to the Secretary. The votes of each member cast for or against any recommendation made pursuant to this subpart shall be duly recorded. Whenever an assembled meeting is held each member must vote in person.

(c) The committee may provide for meeting by telephone, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: Provided, that if any assembled meeting is held, all votes shall be cast in person.

* * * * *

8. Add § 905.43 to read as follows:

§ 905.43 Contributions.

The Committee may accept voluntary contributions. Such contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

9. Revise § 905.80 to read as follows:

§ 905.80 Fruit not subject to regulation.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder, ship any variety for the following purposes:

- (1) To a charitable institution for consumption by such institution;
- (2) To a relief agency for distribution by such agency;
- (3) To a commercial processor for conversion by such processor into canned or frozen products or into a beverage base;
- (4) By U.S. Mail or private courier; or

(5) In such minimum quantities, types of shipments, or for such purposes as the committee with the approval of the Secretary may specify.

(b) No assessment shall be levied on fruit so shipped. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, or safeguards as it may deem necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle a variety pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the variety will not be used for any purpose not authorized by this section.

10. Revise § 905.114 to read as follows:

§ 905.114 Redistricting of citrus districts and reapportionment of grower members.

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) Citrus District One shall include that portion of the State of Florida, which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. This district shall have 10 members and 10 alternates.

(b) Reserved.

11. Amend § 905.120 by revising paragraphs (d) and (e) and removing paragraphs (f) and (g) to read as follows.

§ 905.120 Nomination procedure.

* * * * *

(d) At each meeting each eligible person may cast one vote for each of the persons to be nominated to represent the district or group, as the case may be.

(e) Voting may be by written ballot. If written ballots are used, all ballots shall be delivered by the chairman or the secretary of the meeting to the agent of the Secretary. If written ballots are not used, the committee's representative shall deliver to the Secretary's agent a listing of each person nominated and a count of the number of votes cast for each nominee for grower member and alternate. Said representative shall also provide the agent the register of eligible voters present at each meeting, a listing of each person nominated, and the number of votes cast.

12. Amend § 905.150 by revising paragraph (d) as follows:

§ 905.150 Eligibility requirements for public member and alternate member.

* * * * *

(d) The public member should be nominated by the Citrus Administrative Committee and should serve a 2-year term which coincides with the term of office of grower members of the Committee.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.